

No. 77-1289

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In the Supreme Court of the United States

OCTOBER TERM, 1977

LUTHERAN HOSPITAL OF MILWAUKEE, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT*

**MEMORANDUM FOR THE NATIONAL LABOR
RELATIONS BOARD**

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1. The Board, applying the principle enunciated in *St. John's Hospital and School of Nursing, Inc.*, 222 NLRB 1150,¹ held that petitioner violated Section 8(a)(1) of the National Labor Relations Act, 61 Stat. 140, 29 U.S.C. 158(a)(1), by promulgating a rule that prohibited employees from soliciting union support and distributing union literature during non-working time in any area to which hospital patients and visitors have access (Pet. App.

¹In that case, the Board held that a hospital rule barring employee solicitation of union support or distribution of union literature in any area to which patients and visitors have access was overly broad. Although such activities could be prohibited in immediate patient care areas, restrictions in other areas open to patients, visitors, and employees on their non-working time were invalid, absent a showing by the hospital that special circumstances made the restrictions necessary to maintain patient care or employee discipline.

41-42, 63-64). The court of appeals, concluding that the Board's holding in *St. John's* that "special circumstances rebutting its usual presumptions with respect to solicitation and distribution exist in the immediate patient care areas of a hospital but do not exist outside of those locations, is both logical and just" (Pet. App. 35), sustained the Board's finding that petitioner's rule was overly broad and thus unlawful.²

2. *Beth Israel Hospital v. National Labor Relations Board*, No. 77-152, argued April 24, 1978, involves the application of the *St. John's* principle to a hospital cafeteria and coffee shop used by employees, patients, and others. The holding in the present case, on the other hand, is not confined "to locations such as cafeterias and coffee shops," but encompasses "all areas to which the public and patients have access" other than " 'immediate patient care areas' " (Pet. App. 36-37).³

Should this Court in *Beth Israel* reject the application of the *St. John's* principle to hospital eating facilities, it would probably be unnecessary to consider whether that principle may be applied to other patient access areas generally. On the other hand, should the Court sustain the application of the *St. John's* principle to hospital eating facilities, it may then be necessary to consider the further

²But cf. *St. John's Hospital and School of Nursing, Inc. v. National Labor Relations Board*, 557 F. 2d 1368 (C.A. 10).

³On March 27, 1978, the Court denied petitioner's motion to consolidate the present case with *Beth Israel*.

question presented in this case. Accordingly, consideration of this petition should be deferred pending this Court's decision in *Beth Israel*.

Respectfully submitted.

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MAY 1978.